APPENDIX

Bankruptcy Reform Act of 1978, Pub. L. 95-598

Title II

Sec. 201. (a) Title 28 of the United States Code is amended by inserting immediately after chapter 5 the following:

"Sec.

"151. Creation and composition of bankruptcy courts.
"152. Appointment of bankruptcy judges.
"153. Tenure and residence of bankruptcy judges.
"154. Salaries of bankruptcy judges.
"155. Chief judge; precedence of bankruptcy judges.
"156. Division of business among bankruptcy judges.
"157. Times of holding court.
"158. Accommodations at places for holding court.
"159. Vacant judgeship as affecting proceedings.
"160. Appellate panels.

§ 151. Creation and composition of bankruptcy courts

"(a) There shall be in each judicial district, as an adjunct to the district court for such district, a bankruptcy court which shall be a court of record known as the United States Bankruptcy Court for the district.

"(b) Each bankruptcy court shall consist of the bankruptcy judge or judges for the district in regular active service. Justices or judges designated and assigned shall be competent to sit as judges of the bankruptcy court.

"(c) Except as otherwise provided by law, or rule or order of court, the judicial power of a bankruptcy court with respect to any action, suit or proceeding may be ex-

ercised by a single bankruptcy judge, who may preside alone and hold a regular or special session of court at the same time other sessions are held by other bankruptcy judges.

"§ 152. Appointment of bankruptcy judges

"The President shall appoint, by and with the advice and consent of the Senate, bankruptcy judges for the several judicial districts. In each instance, the President shall give due consideration to the recommended nominee or nominees of the Judicial Council of the Circuit within which an appointment is to be made.

"§ 153. Tenure and residence of bankruptcy judges

"(a) Each bankruptcy judge shall hold office for a term of 14 years, but may continue to perform the duties of his office until his successor takes office, unless such office has been eliminated.

"(b) Removal of a bankruptcy judge during the term for which he is appointed shall be only for incompetency, misconduct, neglect of duty, or physical or mental disability. Removal shall be by the judicial council of the circuit or circuits in which the bankruptcy judge serves, but removal may not occur unless a majority of all the judges of such circuit council or councils concur in the order of removal. Before any order of removal may be entered, a full specification of the charges shall be furnished to the bankruptcy judge, and he shall be accorded an opportunity to be heard on the charges. Any cause for removal of any bankruptcy judge coming to the knowledge of the Director of the Administrative Office of the United

States Courts shall be reported by him to the chief judge of the circuit or circuits in which he serves, and a copy of the report shall at the same time be transmitted to the circuit council or councils and to the bankruptcy judge.

"(c) Each bankruptcy judge shall reside in the district or one of the districts for which he is appointed, or within 20 miles of his official station.

"(d) If the public interest and the nature of the business of a bankruptcy court require that a bankruptcy judge should maintain his abode at or near a particular part of the district the judicial council of the circuit may so declare and may make an appropriate order. If the bankruptcy judges of such a district are unable to agree as to which of them shall maintain his abode at or near the place or within the area specified in such an order the judicial council of the circuit may decide which of them shall do so.

"§ 154. Salaries of bankruptcy judges

"Each judge of a bankruptcy court shall receive a salary at an annual rate of $50,000, subject to adjustment under section 225 of the Federal Salary Act of 1967 (2 U.S.C. 351-361), and section 461 of this title.

"§ 160. Appellate panels

"(a) If the circuit council of a circuit orders application of this section to a district within such circuit, the chief judge of each circuit shall designate panels of three bankruptcy judges to hear appeals from judgments, orders, and decrees of the bankruptcy court of the United States for such district. Except as provided in section 293(e) of this

title, a panel shall be composed only of bankruptcy judges for districts located in the circuit in which the appeal arises. The chief judge shall designate a sufficient number of such panels so that appeals may be heard and disposed of expeditiously.

"(b) A panel designated under subsection (a) of this section may not hear an appeal from a judgment, order, or decree entered by a member of the panel.

"(c) When hearing an appeal, a panel designated under subsection (a) of this section shall sit at a place convenient to the parties to the appeal.".

Section 206. Section 294 of title 28 of the United States Code is amended—

(1) in subsection (c), by deleting "or district" and inserting "district or bankruptcy judge"; and

(2) in subsection (d), by striking out "or district judge" and inserting in lieu thereof ", district judge or bankruptcy judge".

Sec. 207. Section 295 of title 28 of the United States Code is amended by striking out "or district" and inserting in lieu thereof "district, or bankruptcy".

Sec. 213. Section 451 of title 28 of the United States Code is amended—

(1) by inserting a comma and "and bankruptcy courts, the judges of which are entitled to hold office for a term of 14 years" immediately before the period at the end of the paragraph beginning with "The term 'court of the United States' "; and

(2) by inserting a comma and "and judge of the bankruptcy courts, the judges of which are entitled to hold office for a term of 14 years" immediately before the period at the end of the paragraph beginning with "Term 'judge of the United States'."

Sec. 236. (a) Chapter 83 of title 28 of the United States Code is amended by inserting immediately after section 1292 the following:

"§ 1293. Bankruptcy appeals

"(a) The courts of appeals shall have jurisdiction of appeals from all final decisions of panels designated under section 160(a) of this title.

"(b) Notwithstanding section 1482 of this title, a court of appeals shall have jurisdiction of an appeal from a final judgment, order, or decree of an appellate panel created under section 160 or a District Court of the United States or from a final judgment, order, or decree of a bankruptcy court of the United States if the parties to such appeal agree to a direct appeal to the court of appeals.".

* * *

Sec. 237. Section 1294 of title 28 of the United States Code is amended—

(1) by striking out "direct and territorial" and inserting in lieu thereof "district, bankruptcy, and territorial";

(2) by striking out the period at the end thereof and inserting a semicolon; and

(3) by adding at the end thereof the following:

"(5) From a panel designated under section 160 (a) of this title to the court of appeals for the circuit in which the panel was so desginated;

"(6) From a bankruptcy court of the United States to the court of appeals for the circuit embracing the district in which the bankruptcy court is located.".

Sec. 238. (a) Section 1334 of title 28 of the United States Code is amended to read as follows:

"§ 1334. Bankruptcy appeals

"(a) The district courts for districts for which panels have not been ordered appointed under section 160 of this title shall have jurisdiction of appeals from all final judgments, orders, and decrees of bankruptcy courts.

"(b) The district courts for such districts shall have jurisdiction of appeals from interlocutory orders and decrees of bankruptcy courts, but only by leave of the district court to which the appeal is taken.

"(c) A district court may not refer an appeal under that section to a magistrate or to a special master.".

* * *

Sec. 241. (a) Title 28 of the United States Code is amended by inserting immediately after chapter 89 the following:

"CHAPTER 90—DISTRICT COURTS AND BANKRUPTCY COURTS

"Sec.
"1471. Jurisdiction.
"1472. Venue of cases under title 11.

"1473. Venue of proceedings arising under or related to cases under title 11.
"1474. Venue of cases ancillary to foreign proceedings.
"1475. Change of venue.
"1476. Creation or alteration of district or division.
"1477. Cure or waiver of defects.
"1478. Removal to the bankrupcty courts.
"1479. Provisional remedies; security.
"1480. Jury trials.
"1481. Powers of bankruptcy court.
"1482. Appeals.

* * * * * * * * * * *

"§ 1471. Jurisdiction

"(a) Except as provided in subsection (b) of this section, the district courts shall have original and exclusive jurisdiction of all cases under title 11.

"(b) Notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11 or arising in or related to cases under title 11.

"(c) The bankruptcy court for the district in which a case under title 11 is commenced shall exercise all of the jurisdiction conferred by this section on the district courts.

"(d) Subsection (b) or (c) of this section does not prevent a district court of a bankruptcy court, in the interest of justice, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a

case under title 11. Such abstention, or a decision not to abstain, is not reviewable by appeal or otherwise.

"(e) The bankruptcy court in which a case under title 11 is commenced shall have exclusive jurisdiction of all of the property, wherever located, of the debtor, as of the commencement of such case.

§ 1473. Venue of proceedings arising under or related to cases under title 11.

(a) Except as provided in subsections (b) and (d) of this section, a proceeding arising in or related to a case under title 11 may be commenced in the bankruptcy court in which such case is pending.

* * *

(c) Except as provided in section (b) of this section, a trustee in a case under title 11 may commence a proceeding arising in or related to such case as statutory successor to the debtor or creditors under section 541 or 544 (b) of title 11 in the bankruptcy court for the district where the State or Federal court sits in which, under applicable nonbankruptcy venue provisions, the debtor or creditors, as the case may be, may have commenced an action on which such proceeding is based if the case under title 11 had not been commenced.

"§ 1478. Removal to the bankuptcy courts

"(a) A party may remove any claim or cause of action in a civil action, other than a proceeding before the United States Tax Court or a civil action by a Government

unit to enforce such governmental unit's police or regulatory power, to the bankruptcy court for the district where such civil action is pending, if the bankruptcy courts have jurisdiction over such claim or cause of action.

"(b) The court to which such claim or cause of action is removed may remand such claim or cause of action on any equitable ground. An order under this subsection remanding a claim or cause of action, or a decision not so remanding, is not reviewable by appeal or otherwise.

"§ 1479. Provisional remedies; security

"(a) Whenever any action is removed to a bankruptcy court under section 1478 of this title, any attachment or sequestration of the goods or estate of the defendant in such action shall hold the goods or estate to answer the final judgment or decree in the same manner as they would have been held to answer final judgment or decree had it been rendered by the court from which the action was removed, unless the attachment or sequestration is invalidated under applicable law.

"(b) Any bond, undertaking, or security given by either party in an action prior to removal under section 1478 of this title shall remain valid and effectual notwithstanding such removal, unless such bond, undertaking, or other security is invalidated under applicable law.

"(c) All injunctions, orders, or other proceedings, in an action prior to removal of such action under section 1478 of this title shall remain in full force and effect until dissolved or modified by the bankruptcy court.

"§ 1480. Jury trials

"(a) Except as provided in subsection (b) of this section, this chapter and title II do not affect any right to trial by jury, in a case under title 11 or in a proceeding arising under title 11 or arising in or related to a case under title 11, that is provided by any statute in effect on September 30, 1979.

"(b) The bankruptcy court may order the issues arising under section 303 of title 11 to be tried without a jury.

"§ 1481. Powers of bankruptcy court

"A bankruptcy court shall have the powers of a court of equity, law, and admiralty, but may not enjoin another court or punish a criminal contempt not committed in the presence of the judge of the court or warranting a punishment of imprisonment.

"§ 1482. Appeals

"(a) Panels designated under section 160 (a) of this title shall have jurisdiction of appeals from all final judgments, orders, and decrees of bankruptcy courts.

"(b) Panels designated under section 160 (a) of this title shall have jurisdiction of appeals from interlocutory judgments, orders, and decrees of bankruptcy courts, but only by leave of the panel to which the appeal is taken.".

Sec. 250. (a) Chapter 153 of title 28 of the United States Code is amended by adding at the end thereof the following:

"§ 2256 **Habeas corpus from bankruptcy courts**

"A bankruptcy court may issue a writ of habeas corpus—

"(1) when appropriate to bring a person before the court—

"(A) for examination;

"(B) to testify; or

"(C) to perform a duty imposed on such person under this title; or

"(2) ordering the release of a debtor in a case under title 11 in custody under the judgment of a Federal or State court if—

"(A) such debtor was arrested or imprisoned on process in any civil action;

"(B) such process was issued for the collection of a debt—

"(i) dischargeable under title 11; or

"(ii) that is or will be provided for in a plan under chapter 11 or 13 of title 11; and

"(C) before the issuance of such writ, notice and a hearing have been afforded the adverse party of such debtor in custody to contest the issuance of such writ".

Title IV

Transition

[Courts During Transition]

Sec. 404. (a) The courts of bankruptcy, as defined under section 1 (10) of the Bankruptcy Act, created under section 2a of the Bankruptcy Act, and existing on September 30, 1979, shall continue through March 31, 1984,

to be the courts of bankruptcy for the purposes of this Act and the amendments made by this Act. Each of the courts of bankruptcy so continued shall constitute a separate department of the district court that is such court of bankruptcy under the Bankruptcy Act.

(b) The term of a referee in bankruptcy who is serving on the date of enactment of this Act is extended to and expires on March 31, 1984 or when his successor takes office. During the period commencing on October 1, 1979, and ending on March 31, 1984 (hereinafter in this title referred to as "the transition period"), unless such referee is found to be not qualified by the Chief Judge of the Circuit Court after consultation with a merit screening committee established as provided in subsection (c) of this section, such a referee in bankruptcy upon the expiration of his appointed term as referee shall have the title of the United States bankruptcy judge, and shall serve in the court of bankruptcy continued under subsection (a) of this section that appointed such United States bankruptcy judge, in the manner prescribed by this title. Section 8335 (a) of title 5 of the United States Code shall not apply in respect of United States bankruptcy judges during the transition period.

(c) There shall be established for each State a merit screening committee composed of the president or the designee of the president of the State bar association, the dean or the designee of the dean of a law school located within the State, and the president or designee of the president of a local bar association for the area wherein a referee in bankruptcy maintains his official headquarters within the State. Each such merit screening committee

shall be organized and summoned to meetings by the circuit executive for the circuit embracing the State, who shall serve as secretary of each such screening committee established within the circuit. Before the expiration of the term of a referee in bankruptcy in office on the date of enactment of this Act, or if his successor has not been appointed before the date of enactment of this Act, a merit screening committee shall be organized by the circuit executive to pass on the qualifications of such referee for the purpose of determining whether the term of such referee shall be extended as provided under subsection (b) of this section.

(d) Except as otherwise provided in this section or in section 407 of this Act, matters relating to the office of United States bankruptcy judges and to United States bankruptcy judges shall continue to be governed during the transition period by the rules set forth in sections 34, 35, 36, 40a, 40b, 40d, 41 and 43 of the Bankruptcy Act as such Act existed on September 30, 1979. A court of bankruptcy may not appoint an individual under such section 34 if the merit screening committee established under subsection (c) of this section for the district of such court finds such individual to be not qualified.

* * *

(f) During the transition period, the provisions of sections 455, 456, 569 (a), 571 (b), 620 (b) (3), and 957 (a) of title 28 of the United States Code shall apply to United States bankruptcy judges and to any court officers or employees appointed or employed under subsection (e) of this section the same as such sections apply to the bankruptcy judges, and to any court officers or employees,

of a United States bankruptcy court established under section 201 of this Act. During the transition period, the position of United States bankruptcy judge shall be deemed to be a position within the purview of subparagraph (C) of section 225 (f) of the Federal Salary Act of 1967 (2 U.S.C. 356 (C)).

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[Jurisdiction And Procedure During Transition]

Sec. 405. (a) (1) All cases commenced under title 11 of the United States Code during the transition period shall be referred to the United States bankruptcy judges. The United States bankruptcy judges may exercise in such cases the jurisdiction and powers conferred by subsection (b) of this section on the courts of bankruptcy continued by section 404 (a) of this Act, and all proceedings in such cases shall be before the United States bankruptcy judges, except—

(A) a proceeding to enjoin a court;

(B) a proceeding to punish a criminal contempt—

(i) not committed in the bankruptcy judge's actual presence; or

(ii) warranting a punishment of imprisonment; or

(C) an appeal from a judgment, order, decree, or decision of a United States bankruptcy judge.

(2) Except as provided in subsection (c) of this section, any proceeding in a court of bankruptcy in a case under title 11 of the United States Code that is not before the

United States bankruptcy judge shall be before the judge of the court of bankruptcy for the district in which such case is pending.

(b) During the transition period, the amendments made by sections 241, 243, 250, and 252 of this Act shall apply to the courts of bankruptcy continued by section 404 (a) of this Act the same as such amendments apply to the United States bankruptcy court established under section 201 of this Act.

(c) (1) During the transition period, an appeal from a judgment order, or decree of a United States bankruptcy judge shall be—

(A) if the circuit council of the circuit in which the bankruptcy judge sits so orders for the district in which the bankruptcy judge sits, then to a panel of three bankruptcy judges appointed in the manner prescribed by section 160 of title 28 of the United States Code, as added by section 201 of this Act;

(B) if the parties to the appeal agree to a direct appeal to the court of appeals for such circuit, then to such court of appeals; or

(C) to the district court for the district in which the bankruptcy judge sits.

(2) During the transition period, the jurisdiction of the district courts, the courts of appeals, and panels of bankruptcy judges to hear appeals shall be the same as the jurisdiction of such courts and panels granted under the amendments made by sections 236, 237, 238, and 241 of this Act to hear appeals from the judgments, orders, and decrees of the bankruptcy courts established under section 201 of this Act.